

**JD**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**FILED**  
APR 11 2011  
MICHAEL KUNZ, Clerk  
Dep. Clerk

REBECCA FUCHS,

Plaintiff

v.

NCO FINANCIAL SYSTEMS, INC.,

Defendant

**11 2490**

Case No.:

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

**(Unlawful Debt Collection Practices)**

**COMPLAINT**

REBECCA FUCHS, ("Plaintiff"), by and through her attorneys, KIMMEL  
& SILVERMAN, P.C., alleges the following against NCO FINANCIAL  
SYSTEMS, INC., ("Defendant"):

**INTRODUCTION**

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection  
Practices Act, 15 U.S.C. § 1692 *et seq.* (FDCPA).

**JURISDICTION AND VENUE**

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d),  
which states that such actions may be brought and heard before "any appropriate  
United States district court without regard to the amount in controversy," and 28

1 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising  
2 under the laws of the United States.

3  
4 3. Defendant conducts business and has an office in the Commonwealth  
5 of Pennsylvania, and therefore, personal jurisdiction is established.

6 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

7  
8 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and  
9 2202.

10 **PARTIES**

11 6. Plaintiff is a natural person residing in Pittsburgh, Pennsylvania,  
12 15209.

13  
14 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §  
15 1692a(3).

16 8. Defendant is a national debt collection company with its corporate  
17 headquarters located at 507 Prudential Road, Horsham, Pennsylvania, 19044-  
18 2308.

19  
20 9. Defendant is a debt collector as that term is defined by 15 U.S.C. §  
21 1692a(6), and sought to collect a consumer debt from Plaintiff.

22  
23 10. Defendant acted through its agents, employees, officers, members,  
24 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
25 representatives, and insurers.

**PRELIMINARY STATEMENT**

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

12. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose, and forbids debt collectors from taking such action. The substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §

1 1692f. The FDCPA is designed to protect consumers from unscrupulous  
2 collectors, whether or not there exists a valid debt, broadly prohibits unfair or  
3 unconscionable collection methods, conduct which harasses, oppresses or abuses  
4 any debtor, and any false, deceptive or misleading statements in connection with  
5 the collection of a debt.  
6

7 13. In enacting the FDCPA, the United States Congress found that “[t]here  
8 is abundant evidence of the use of abusive, deceptive, and unfair debt collection  
9 practices by many debt collectors,” which “contribute to the number of personal  
10 bankruptcies, to marital instability, to the loss of jobs, and to invasions of  
11 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing  
12 laws and procedures for redressing debt collection injuries to be inadequate to  
13 protect consumers. 15 U.S.C. § 1692b.  
14

15 14. Congress enacted the FDCPA to regulate the collection of consumer  
16 debts by debt collectors. The express purposes of the FDCPA are to “eliminate  
17 abusive debt collection practices by debt collectors, to insure that debt collectors  
18 who refrain from using abusive debt collection practices are not competitively  
19 disadvantaged, and to promote consistent State action to protect consumers against  
20 debt collection abuses.” 15 U.S.C. § 1692e.  
21  
22  
23

## 24 **FACTUAL ALLEGATIONS**

25 15. At all pertinent times hereto, Defendant was hired to collect a

1 consumer debt allegedly owed by Plaintiff.

2 16. The alleged debt at issue arose out of transactions, which were  
3 primarily for personal, family, or household purposes.  
4

5 17. Beginning in April 2010 and continuing through October 2010,  
6 Defendant constantly and continuously placed collection calls to Plaintiff's work  
7 and cellular telephone numbers seeking and demanding payment for an alleged  
8 debt.  
9

10 18. Defendant contacted Plaintiff almost everyday, and at times,  
11 Defendant called Plaintiff twice a day.

12 19. When Defendant contacted Plaintiff at her place of employment,  
13 Defendant did not identify itself; rather, it left messages for Plaintiff to call a  
14 number, which Plaintiff confirmed belonged to Defendant.  
15

16 20. On numerous occasions, Plaintiff informed Defendant that she could  
17 not receive personal calls at work and to stop calling her at her place of  
18 employment.  
19

20 21. However, Defendant disregarded Plaintiff's instructions and  
21 continued to contact her at her place of employment.  
22

23 22. Then, on or about August 24, 2010, because Plaintiff had not made  
24 payment on the alleged debt, Defendant threatened Plaintiff with legal action,  
25

1 stating that they “would see [her] in court” and that she “would be responsible for  
2 legal fees,” in order to induce Plaintiff to make a payment on the alleged debt.

3  
4 23. Defendant further threatened Plaintiff that there may be “possible jail  
5 time” if Plaintiff did not take care of this debt immediately.

6 24. Defendant’s threats caused Plaintiff to agree to a payment plan, and  
7 on or about September 10, 2010, Plaintiff made a payment on the alleged debt.

8  
9 25. Thereafter, on October 8, 2010, despite having Plaintiff’s contact  
10 information, Defendant called Plaintiff’s friend and stated it was “looking for  
11 Rebecca A. Fuchs” to speak to “her about a debt.”

12  
13 26. Most recently, on or about October 13, 2010, Defendant threatened to  
14 call Plaintiff’s human resources department and supervisor and have her wages  
15 garnished if immediate payment was not made, despite knowing that in  
16 Pennsylvania, an individual’s wages cannot be garnished for an unpaid debt.

17  
18 27. Upon information and belief, within five (5) days of its initial contact  
19 with Plaintiff, Defendant failed to send Plaintiff written notification informing her  
20 of her rights to dispute the debt and/or request verification of the debt.

21  
22 28. Defendant conducted its debt collection activities in ways that were  
23 factually misrepresented and in violation of the FDCPA.

## CONSTRUCTION OF APPLICABLE LAW

29. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

30. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

31. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude

1 which includes the ignorant, the unthinking, and the credulous, and the fact that a  
2 false statement may be obviously false to those who are trained and experienced  
3 does not change its character, nor take away its power to deceive others less  
4 experienced.” Id. The least sophisticated consumer standard serves a dual  
5 purpose in that it ensures protection of all consumers, even naive and trusting,  
6 against deceptive collection practices, and protects collectors against liability for  
7 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at  
8 1318.

11 **COUNT I**  
12 **DEFENDANT VIOLATED THE**  
13 **FAIR DEBT COLLECTION PRACTICES ACT**

14 32. Defendant violated the FDCPA based on the following:

- 15 a. Defendant violated §1692 generally;
- 16 b. Defendant violated §1692c(a)(1) of the FDCPA by communicating  
17 with Plaintiff at her place of employment, a place known to be  
18 inconvenient to Plaintiff;
- 19 c. Defendant violated §1692c(a)(3) of the FDCPA by communicating  
20 with Plaintiff at her place of employment even though Defendant  
21 knows that Plaintiff’s employer prohibits such communication;
- 22 d. Defendant violated §1692c(b) of the FDCPA by communicating  
23 with another person other than Plaintiff without her consent;
- 24  
25



- 1 e. Defendant violated §1692d of the FDCPA by engaging in conduct  
2 the natural consequence of which is to harass, oppress, or abuse  
3 the Plaintiff in connection with the collection of a debt;  
4
- 5 f. Defendant violated §1692d(5) of the FDCPA by causing a  
6 telephone to ring and engaging Plaintiff in telephone conversations  
7 repeatedly and continuously with the intent to annoy, abuse or  
8 harass;  
9
- 10 g. Defendant violated §1692d(6) of the FDCPA by placing telephone  
11 calls without meaningfully disclosing its identity;  
12
- 13 h. Defendant violated §1692e of the FDCPA by using false,  
14 deceptive or misleading representations or means in connection  
15 with the collection of a debt;  
16
- 17 i. Defendant violated §1692e(4) of the FDCPA by representing that  
18 nonpayment of the alleged debt will result in the arrest or  
19 imprisonment of Plaintiff;  
20
- 21 j. Defendant violated §1692e(4) of the FDCPA by representing that  
22 nonpayment of the alleged debt will result in the garnishment of  
23 Plaintiff's wages;  
24
- 25 k. Defendant violated §1692e(5) of the FDCPA by threatening to  
take any action that cannot legally be taken or that is not intended

1 to be taken;

2 l. Defendant violated §1692e(7) of the FDCPA by falsely  
3 representing that Plaintiff had committed a crime;

4 m. Defendant violated §1692e(10) of the FDCPA by using false and  
5 deceptive means in an attempt to collect a debt;

6 n. Defendant violated §1692f of the FDCPA by using unfair or  
7  
8 unconscionable means to collect or attempt to collect a debt; and

9 o. Defendant violated §1692g of the FDCPA by failing to send  
10 written notification, within five (5) days after its initial  
11 communication with Plaintiff, advising Plaintiff of her rights to  
12 dispute the debt or request verification of the debt.  
13  
14

15 33. As a direct and proximate result of one or more or all of the statutory  
16 violations above, Plaintiff has suffered emotional distress.

17 WHEREFORE, Plaintiff, REBECCA FUCHS, respectfully requests  
18 judgment be entered against Defendant, NCO FINANCIAL SYSTEMS, INC., for  
19 the following:  
20

21 a. Declaratory judgment that Defendant's conduct violated the Fair  
22 Debt Collection Practices Act,

23 b. Statutory damages pursuant to the Fair Debt Collection Practices  
24 Act, 15 U.S.C. § 1692k,  
25

- c. Actual damages,
- d. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k
- e. Any other relief that this Honorable Court deems appropriate.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, REBECCA FUCHS, demands a jury trial in this case.

DATED: 4/11/11

RESPECTFULLY SUBMITTED,  
KIMMEL & SILVERMAN, P.C.

By: \_\_\_\_\_

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